Minutes of the 107th meeting of the Board of the EHRC

18 October 2022 (14:30-17:30)
EHRC Office, Arndale House, The Arndale Centre, Manchester, M4 3AQ

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Attending

Commissioners
Baroness Kishwer Falkner (Chairwoman); Eryl Besse; Jess Butcher; David Goodhart; Alasdair Henderson; Helen Mahy; Dr Lesley Sawers and Su-Mei Thompson.

Officers
Marcial Boo, Chief Executive Officer
Cath Denholm, Chief Operating Officer
Melanie Field, Chief Strategy and Policy Officer
Moya Alcock, Director, Communications (items 8, 9 and 11)
Rob Bancroft, Principal, Policy (item 10)
Angus Cleary, Senior Principal, Inquiries and Intelligence (item 11)
Jacqueline Killeen, Director, Regulation
Ruth Latusek, Senior Associate, Governance Lead
Alasdair MacDonald, Director, Policy and Human Rights Monitoring (items 8 to 10)
Bill Malloy, Director, Planning, Performance and Governance (item 9)
Britta Rinaldi, Chief of Staff
Luke Taylor, Director, Evidence, Strategy and Three Nations (items 8 and 9)
Sarah Whelan, Principal, Corporate Governance

Guests
Olivia Ely, Government Equality Hub

1. Chairwoman's welcome and apologies

1.1 The Chairwoman welcomed attendees. Apologies for absence were received from Commissioners Caroline Waters and Akua Reindorf.

2. Declarations of interest

2.1 There were no new declarations of interest.

3. Minutes of the 105th Board meeting (EHRC 107a.01, 107a.02)

3.1 The Board approved the minutes of the special meeting of 5 September as an accurate record; and they approved the minutes of the meeting of 14 September, subject to minor amendments to paragraph 6.2.

4. Actions arising (EHRC 107a.03)

4.1 The Board noted the action log.

4.2 The Chairwoman advised Commissioners that the Governance team will write to them with proposals: to agree the date of the September 2023 Board meeting; to hold the January 2024 meeting in Cardiff; and to hold the May 2024 meeting online.

Action: Governance team to write to Commissioners with Board meeting proposals, for Commissioners to agree by correspondence.

4.3 The Chairwoman advised Commissioners that she and the CEO are discussing the fees and expenses guidance for Commissioners and Committee members. The CEO and COO will liaise with the Government Equality Hub, table the updated guidance at a future Audit and Risk Assurance Committee (ARAC) meeting and communicate the outcome to the Board.

Action: Governance team to schedule fees and expenses guidance for Commissioners and Committee members at the February 2023 ARAC meeting and schedule an update at the March 2023 Board meeting.

5. Committee and Commissioner Working Group updates

5.1 The Chair of ARAC advised that she is pleased that the EHRC's budget has been agreed by the Government.

5.2 The Chair of the Statutory Report Commissioner Working Group (as re-named at this meeting) thanked Wales Committee member, Alison Parken, for her contribution to the Commissioner Working Group over a number of years as Alison steps down from the Committee.

Action: CEO to write to Alison Parken with thanks for her contribution to the Commissioner Working Group, the Wales Committee and the EHRC.

5.3 The Chair of the Human Rights Monitoring Commissioner Working Group advised that the Commissioner Working Group will review the draft reports of the Committee on the Rights of the Child and International Covenant on Economic, Social and Cultural Rights, escalating any issues to the Chairwoman and Board as needed, as per the Commissioner Working Group's Terms of Reference. She also advised that a subgroup of the Commissioner Working Group is meeting on 19 October to discuss the proposed updates to the Human Rights Tracker.

5.4 The Wales Commissioner advised that the Wales Committee met on 7 October and discussed the social care inquiry report and the draft Scotland and Wales Committees' Terms of Reference (ToRs).

5.5 The Scotland Commissioner advised that the Scotland Committee met on 6 October to discuss the draft Scotland and Wales Committees' ToRs.

6. CEO Report & Chairwoman's update (EHRC 107a.04)

6.1 Commissioners approved the proposed name change of the Commissioner Working Group from Is Britain Fairer? to the Statutory Report Commissioner Working Group. They agreed to revisit the Commissioner Working Group's remit after the next statutory report is published in October 2023.

Action: Governance team to schedule a discussion at a future Statutory Report Commissioner Working Group meeting on its role and remit after October 2023.

6.2 Commissioners approved the appointment to the Wales Committee of Mary van den Heuvel from 1 April 2023 for a three-year term.

Action: Governance team to take forward Mary van den Heuvel's appointment to the Wales Committee.

6.3 Commissioners noted the CEO report, including updates on the budget, the publication date of the EHRC's guidance on discrimination related to afro-textured hair, and the briefing for the House of Lords second reading of the Public Order Bill. The Chairwoman requested sight of any EHRC briefings to the House of Lords.

Action: Policy team to notify the Chairwoman of the date of the second reading of the Public Order Bill, and of any other briefings which go to the House of Lords.

6.4 Commissioners enquired about the rollout of Microsoft Teams and noted security issues when using non-EHRC devices. The Chairwoman advised that Commissioners should have access to EHRC devices, particularly Committee

Chairs.

Action: COO to confirm the EHRC's policy on ICT equipment provision for Commissioners.

6.5 The Wales Commissioner advised that she had not been made aware of the letter from the Minister for Education and Welsh Language in response to our equality concerns relating to the Commission for Tertiary Education and Research (Wales) Bill.

Action: All teams, via Private Office and Governance, to ensure Scotland and Wales Commissioners are informed of stakeholder engagement in Scotland and Wales respectively.

7. National Human Rights Institution (NHRI) re-accreditation outcome and next steps (EHRC 107a.05, 107a.05a)

7.1 Commissioners noted the positive outcome of the EHRC's re-accreditation as an 'A' status NHRI and the Sub-Committee on Accreditation's (SCA's) recommendations. They also noted the approach to handling, including responding to the SCA's recommendations within the 28-day deadline. A more substantive paper on how the EHRC will take forward the SCA's recommendations will be tabled at the January 2023 Board meeting.

Action: Governance team to schedule a discussion on the SCA's recommendations and stakeholder engagement at the January 2023 Board meeting.

7.2 The Chairwoman thanked the team and Commissioners Su-Mei Thompson and Alasdair Henderson for the excellent briefing and support with preparation for the SCA hearing.

7.3 Commissioners were advised that there is little scope for significant changes to the recommendations, and that officers will meet the European Network of NHRI observers to hear more detailed feedback on the background to the recommendations made by the SCA.

7.4 Commissioners provided a steer on how to respond to the SCA's recommendations, including clarifying existing EHRC procedures, putting on record where there is limited scope for us to address specific recommendations, and requesting a change to the form of words where appropriate. The Scotland Commissioner suggested that the EHRC reviews its Memorandum of Understanding with the Scottish Human Rights Commission, and Commissioners agreed.

7.5 Commissioners made the following observations and suggestions in relation to communications and stakeholder engagement, including to consider:

a) how to maximise media opportunities when the final recommendations are released, noting that recent media coverage has been positive but limited;

b) including Commissioners in promoting social media content to reach more people;
c) how to engage with stakeholders who were negative, as part of encouraging non-divisive public dialogue; and
d) how to use this opportunity to improve engagement with the many stakeholders who are neutral to the EHRC.

7.6 The Chairwoman advised Commissioners that she and the CEO will raise some of these issues in their meeting with the Minister for Equalities.

Action: Strategy team to provide a briefing on SCA's recommendations for the Chairwoman and CEO's meeting with the Minister for Equalities, Nadim Zahawi MP.

7.7 Commissioners were advised that the EHRC has received a Freedom of Information (FOI) request about our re-accreditation submission. The Chairwoman asked to be sighted on this.

Action: Communications to ensure the Chairwoman has sight of the FOI response.

8. Online Safety Bill (EHRC 107a.06)

8.1 Commissioners agreed with the recommended policy positions and approved the process for agreeing supplementary policy positions as the Bill progresses through Parliament. Commissioners made the following observations and suggestions:

a) to consider a general principle that for things that are not unlawful in the real world, the state should be very cautious about making them unlawful online;
b) promoting more media and information literacy should be a priority so that people are better able to identify misinformation and disinformation;
c) to consider that, as an alternative to taking down harmful content, the onus could be on service providers to promote good quality, verifiable content;
d) fostering good relations is important, but the law might not be the way to enforce it, and stakeholder engagement may be more appropriate;
e) to consider what can be done to regulate online content from abroad that provokes hatred between groups in the UK;
f) the difference between protecting children and regulating for adults is a distinction worth making;
g) the EHRC could play a supportive role in ensuring financial penalties are not applied unfairly and disproportionately;
h) if the Government does not fully define what should be included in 'legal but harmful' content, the clause should be removed;
i) the suggestion that the Government should produce statutory guidance on the meaning of 'serious distress' is good, particularly if the guidance is specific, as the term is subjective and might be drawn too widely;
j) to consider to what extent services can apply verification for user identity provision and what they can do with respect to anonymity.

8.2 Commissioners agreed the stakeholder engagement strategy. They suggested communicating our position to a wider range of stakeholders, engaging with key Scottish and Welsh stakeholders, and engaging the Scotland and Wales Committees.

Action: Governance team to schedule discussions on the Online Safety Bill for future Scotland and Wales Committee meetings.

8.3 The Scotland Commissioner enquired about links with other legislation, such as Hate Crime in Scotland, and requested guidance on the implications in the Scottish context.

Action: Policy team to provide guidance to the Scotland Commissioner on the implications of the Online Safety Bill in the Scottish context.

9. Social care inquiry update (EHRC 107a.07)

9.1 The Board noted the progress made on the EHRC's inquiry into challenging adult social care decisions in England and Wales, including the draft key findings and recommendations. They noted that a final draft of the report and communications and handling plan will be discussed at the January 2023 Board meeting and will also be discussed prior to that Board meeting at the Wales Committee.

Action: Governance team to schedule the social care inquiry report and communications handling plan at the January 2023 Board meeting.

9.2 Commissioners advised that the EHRC's communications should lead with setting out the overall picture, acknowledging that a root problem is funding, suggesting what could be done currently and what we can do to help local authorities. They also made the following observations and suggestions:

a) the report is well-timed given that the number of people going into the social care system is increasing;
b) funding is key, noting the tension between the legal duty on local authorities to provide services and to spend within budget;
c) they supported making it a statutory requirement for local authorities to publish annual social care complaints reports;
d) to include positive examples of good practice by local authorities;
e) to look at indirect discrimination, the integrated health and social care approach (as in Scotland and Greater Manchester), occupational health, and ensuring local authorities are signposting properly; and
f) to demonstrate that we have engaged with disability organisations, and when we suggest action by government or authorities, to encourage them to do so through co-created strategies and solutions with disability organisations.

9.3 The Wales Commissioner reported the initial views of the Wales Committee on handling which was that the EHRC should consider consulting a range of Welsh organisations as well as the Minister and Deputy Minister, and target recommendations to Welsh stakeholders. They had also advised that we should ensure that there is a process to track where recommendations have

been effective and that the mandatory obligation regarding signposting already exists in Wales. Finally, we should aim to align with the Welsh timetable in light of the Social Services and Well-being Act.

10. AOB (EHRC 107a.08a, 107a.08b, 107a.08c, 107a.08d)

10.1 The Board noted that the next meeting would be a virtual meeting on 23 November.

10.2 The Board noted the Forward Schedule and the draft minutes of the Scotland Committee, Wales Committee and Statutory Report Commissioner Working Group meetings.